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February 19, 1998

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**BY HAND**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

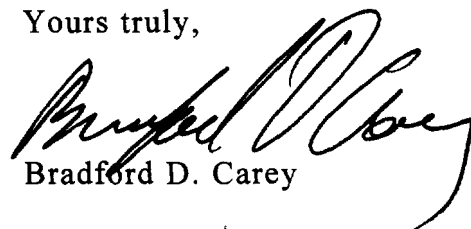
RE: In the Matter of Amendment of §73.202(b) Table of  
Allotments - FM Broadcast Stations Kerrville, Texas  
MM Docket No. 97-244 - RM-9200  
*Reply Comments of Stronghold Foundation, Inc.*

Dear Ms. Salas:

Enclosed please find the original and four (4) copies of Reply  
Comments of the Stronghold Foundation, Inc. for filing with the Commission  
in connection with the above-captioned.

If you should have any questions regarding this matter, kindly direct  
them to the undersigned.

Yours truly,

  
Bradford D. Carey

BDC/mv  
Enclosures

cc: John A. Karousos  
Chief, Allocations Branch

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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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FEB 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of §73.202(b)	)	MM Docket No.
Table of Allotments	)	97-244
FM Broadcast Stations	)	RM-9200
(Kerrville, Texas)	)	

TO: Chief, Allocations Branch, MMB Policy and Rules Division

**REPLY COMMENTS OF THE**  
**STRONGHOLD FOUNDATION, INC.**

The Stronghold Foundation, Inc. ("Stronghold") by its undersigned Counsel, pursuant to the Commission's rules, hereby states its Reply Comments in support of the proposed allotment of channel, 291A, to Kerrville, Texas. **THERE IS NO LEGITIMATE REASON NOT TO ESTABLISH THE PROPOSED ALLOTMENT.<sup>1</sup>**

Stronghold (the "Petitioner") requested that the channel be added. The Notice of Proposed Rule Making in this proceeding, released December 19, 1997 (the "NPRM"), noted that adoption of the proposed amendment to the Table of Allotments would provide Kerrville with another local FM broadcast service.

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<sup>1</sup>Kent S. Foster counterproposed that instead of allotting channel 291A at Kerrville, the Commission allot it at both Leaky and Mason, Texas. As discussed below, there are several other channels which could be allotted to Leaky and to Mason. Thus, any conflict between Stronghold's instant proposal and Foster's counterproposals is an unnecessary contortion of the Commission's processes by Foster. As of the date hereof, no other comments or counterproposals had been received by the Undersigned Counsel to The Stronghold Foundation, Inc. Any comments or counterproposals not served on the undersigned would be violative of the Commission's *ex parte* rule and could not be considered.

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As established in the Petition for Rulemaking, the proposed channel can be allotted in compliance with the Commission's technical regulations without a site restriction.

In Comments, Stronghold restated its support for the proposed allotment and incorporated by reference its prior showings and commitments. Stronghold urged that the Commission amend the Table of Allotments to include the proposed channel. Moreover, Stronghold committed in its prior filings that if the Commission adopts the proposed allotment, Stronghold will file an application for a construction permit to build a station on the new channel and that if it is granted a construction permit, Stronghold will expeditiously build a station on the channel and operate it. Stronghold again reaffirms those commitments.

Kent S. Foster ("Foster") filed counterproposals seeking the allotment of channel 291A to each of two communities, Mason and Leaky, Texas. Where, as here, a proposal is met with one or more counter proposals, the Commission must evaluate each of the proposals under its established criteria for ranking the public interest factors, *unless there are other channels which can be allotted.*

**A plethora of other channels are available for allotment to each Mason and Leaky.** There is no need for the Commission to chose between Petitioner's proposal to allot channel 291A to Kerrville and Foster's counterproposals under the Commission's criteria for selection between competing proposals because there are numerous other channels available for allotment at Mason and Leaky. As set forth in the attached engineering statement of Charles Gallagher, Exhibit One hereto, several channels have been identified as being available for use at Mason. Channels 224A, 259A and 273C3

are available without a site restriction and channels 240A, 245A, and 288A are available with site restrictions. Channels 226A, 250A and 296A have been identified for use at Leaky without a site restriction and channels 239A, 224A, 275A, 277A and 289A could be used at Leaky with a site restriction. Channel 296C3 could be allotted to Leaky with a 3 km restriction.

Thus, a station of Class C3 or better could be allotted to each community on channels other than 291.<sup>2</sup>

**FOR ALLOTMENT PURPOSES, EACH FM CHANNEL IS CONSIDERED EQUIVALENT TO OTHERS.**

The Commission has long held that for allotment purposes, all FM channels are considered to be equal to each other and Foster does not allege any reason that channel 291A (as compared with any of the many other available channels) should be allotted to either Mason or Leaky.

**AN ADDITIONAL ALLOTMENT AT KERRVILLE WOULD BE PREFERRED OVER MASON AND LEAKY.**

Leaky (population 468) already has a class A FM allotment and Mason (population 2,153) has a class C2 allotment. Kerrville (population 15,276) presently has two allotments.<sup>3</sup> Clearly, Kerrville with its vastly greater population would be preferred were

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<sup>2</sup>With so many other channels (including superior channels) available for allotment to Leaky and Mason, it is troubling that Foster would burden this proceeding with a counterproposal suggesting the use of channel 291 at Mason and Leaky, rather than file a petition for rulemaking seeking the allotment of non-conflicting channels. See Kaltrim Broadcasting Co., 45 RR 2d 1080 B'cast Bur 1979.

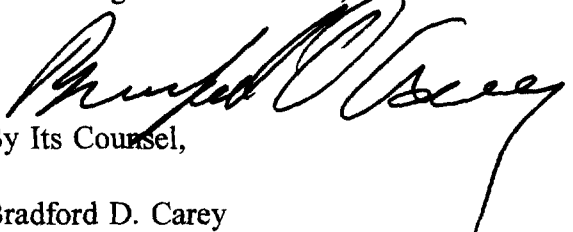
<sup>3</sup>Population figures are taken from the AAA Road Atlas, 1992 edition, based on the 1990 census.

the Commission forced to select which proposal should be adopted. Kerrville's population is nearly six times as large as is the combined population of Mason and Leaky.

**NEW ALLOTMENTS SHOULD BE CREATED AT KERRVILLE, LEAKY  
AND MASON.**

In summary, Stronghold urges that the Table of Allotments be amended as proposed in the NPRM, by addition of channel 291A at Kerrville. The only opposition is that of Foster, who counterproposes that allotments should be added at Mason and Leaky. Stronghold, the Petitioner, has no objections to the creation of additional allotments at Mason and Leaky provided that Kerrville is first allotted channel 291A. Since wide area channels are available for allotment at Mason and Leaky, they should be allotted.

Respectfully Submitted  
The Stronghold Foundation, Inc.

  
By Its Counsel,

Bradford D. Carey  
Hardy & Carey, L.L.P.  
111 Veterans Blvd., Suite 255  
Metairie, Louisiana 70005  
(504) 830-4646

Dated: February 23, 1998

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**ENGINEERING STATEMENT  
IN REGARD TO REPLY COMMENTS  
RELATED TO A PETITION FOR  
RULEMAKING TO ADD CHANNEL 291A  
TO KERRVILLE, TEXAS**

This engineering statement and associated exhibits have been prepared on behalf of The Stronghold Foundation, Inc. (Stronghold), petitioner for change in Section 73.202 of the FCC Rules to allot channel 291A to Kerrville, Texas. In its petition for rulemaking, Stronghold demonstrated that channel 291A could be used at Kerrville with no site restriction. A Notice of Proposed Rulemaking was issued on December 10, 1997, by the FCC as MM Docket No. 97-244, with a comment date of February 9, 1998.

A counter proposal was filed by Ken S. Foster, (Foster) proposing to allot channel 291A to Mason, Texas. In a separate counter proposal Foster also proposes to allot channel 291A to Leakley, Texas, with site restriction of 7.1 kilometers northwest of Leakley. The two allotments are not mutually exclusive with each other but are both mutually exclusive with the allotment of channel 291A to Kerrville.

This office has undertaken two frequency searches of the FM broadcast band to determine if there are any other channels that could be allotted to Mason and Leakley that would not be in conflict with the channel proposed by Stronghold to Kerrville. The frequency search for Mason was made using latitude 30° 44' 55",

longitude 99° 13' 49", and for Leakley using latitude 29° 43' 42", longitude 99° 45' 48", as listed for each community in the National Atlas.

The attached Figure 1 lists the separation requirements related to the use of FM channels 224A, 259A and 273C3 at Mason, Texas. All three channels can be used with no site restriction. In addition, channels 240A, 245A, and 288A could be used with site restrictions of 11 kilometers, 8 kilometers and 6 kilometers respectively. It will be noted that the Foster counter proposal is for a class A channel while channel 273 could be used for class C3 facilities.

The attached Figure 2 lists the separation requirements related to the use of FM channels 226A, 250A and 296A at Leakley, Texas. All three channels can be used with no site restriction. In addition, channels 239A, 224A, 275A, 277A and 289A could be used with site restrictions of 11 kilometers, 3 kilometers, 6 kilometers, 6 kilometers and 7 kilometers, respectively. Channel 296 could be used by class C3 facilities with a site restriction of 3 kilometers northwest of the center of Leakley. It will be noted that the Foster counter proposal is for a class A channel while channel 296 could be used for class C3 facilities.

It is believed that the results of the frequency searches reported herein clearly show that there is an ample number of other channels that could be used at Mason and Leakley other than the channel proposed by Foster, and that those other channels would not be in conflict with the channel proposed by Stronghold for Kerrville. It is surprising that the consulting engineer for Foster did not discover

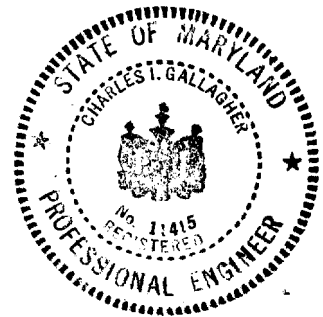
that higher class channels were available for both Mason and Leakley and that those channels would not involve conflict with the Kerrville proposal.

I, Charles I. Gallagher, certify under penalty of perjury that this engineering statement and associated exhibits have been prepared by me or under my direct supervision. I further state that I am a Consulting Radio Engineer, and a Registered Professional Engineer in the State of Maryland, Registration No. 11415, that my qualifications are a matter of record with the Federal Communications Commission, having been presented on previous occasions. The contents of this Engineering Statement are true and correct to the best of my knowledge, information and belief.

*Charles I. Gallagher*

Charles I. Gallagher

February 18, 1998





**GALLAGHER & ASSOCIATES**

CONSULTING RADIO ENGINEERS

HAGERSTOWN, MD

**FIGURE 1**

Database: FCC 2/98

**COMPUTERIZED SEPARATIONS STUDY****MASON, TEXAS**

Reference Point: 30° 44' 55" 99° 13' 49"

BASED ON SEPARATIONS IN SECTION 73.207

## Channel No. 224 as a Class A

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
KITE	KERRVILLE, TX	LIC	BLH-940603KD	222C2	44.0	123	177.2	70.0	55	15.0
KDCD	SAN ANGELO, TX	LIC	BLH-800509AC	225C1	100	183	301.1	148.7	133	15.7

## Channel No. 259 as a Class A

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
KBCY	TYE, TX	LIC	BLH-870506KI	259C1	100	227	335.9	202.2	200	2.2
KISSFM	SAN ANTONIO, TX	LIC	BLH-870928KB	258C	100	339	150.1	188.1	165	23.1

## Channel No. 273 as a Class C3

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
ALLOC	LLANO, TX	ADD c	-	275A			95.9	44.0	42	2.0
ALLOC	LLANO, TX	ADD c	-	271A			93.9	44.2	42	2.2
KBRQ	HILLSBORO, TX	LIC	BLH-840326AS	273C1	100	137	58.3	230.5	211	19.5
KTFM	SAN ANTONIO, TX	LIC	BLH-801009AC	274C1	100	204	153.8	164.0	144	20.0

Note: Distances are in kilometers

This report contains information compiled from a commercial data base service. Gallagher & Associates believes the service to be an accurate and current source of information. However, Gallagher & Associates shall not assume responsibility for erroneous or incomplete information in this report.

# GALLAGHER & ASSOCIATES

CONSULTING RADIO ENGINEERS

HAGERSTOWN, MD

Database: FCC 2/98

FIGURE 2

## COMPUTERIZED SEPARATIONS STUDY

LEAKEY, TEXAS

Reference Point: 29° 43' 42" 99° 45' 48"

BASED ON SEPARATIONS IN SECTION 73.207

### Channel No. 226 as a Class A

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
KENU	UVALDE, TX	LIC	BLH-960530KB	229A	2.90	89	172.5	50.6	31	19.6*
KROM	SAN ANTONIO, TX	LIC c	BLH-970530KA	225C1	45	412	108.7	153.8	133	20.8*

Note: Distances are in kilometers

\* = Section 73.215 Assignment

### Channel No. 250 as a Class A

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
ALLOC	MASON, TX	VAC	Docket-89-84	249C2			35.3	107.3	106	1.3
NEW	MASON, TX	APP c	BPH-960826MS	249C2	50	150	34.4	107.6	106	1.6
NEW	MASON, TX	APP	BPH-960826MH	249C2	50	150	33.8	112.0	106	6.0
NEW	MASON, TX	APP	BPH-960823MF	249C2	50	150	33.8	112.0	106	6.0
KAJA	SAN ANTONIO, TX	LIC	BLH-910118KA	247C	98	300	102.4	103.2	95	8.2

Note: Distances are in kilometers

### Channel No. 296 as a Class A

CALL	LOCATION	STATUS	FILE NUMBER	CHANNEL	ERP	HAAT	AZM.	DIST.	REQ'D	CLEAR
XHPNSF	PIEDRAS NEGRAS, CI	c	-	296A	3.0	100	213.0	135.1	111	24.1
ALLOC	PIEDRAS NEGRAS, CI	c	-	296A			213.0	135.1	111	24.1

Note: Distances are in kilometers

This report contains information compiled from a commercial data base service. Gallagher & Associates believes the service to be an accurate and current source of information. However, Gallagher & Associates shall not assume responsibility for erroneous or incomplete information in this report.